The BEACON SpotLight

A Study of Constitutional Issues by Topic

Issue 14: Arbitrary Government Action

Conservatives and Libertarians have admirably fought growing federal intervention every step of the way. Sadly, however, arguing the specifics has necessarily brought about incremental defeat at every turn.

Justifying the particulars on topics the Constitution holds off-limits to federal debate foolishly concedes to our adversaries a position they do not rightfully hold.

Arguments for or against topics that were never delegated do not matter—the only thing that matters is whether the Constitution allows the discussion.

Patriots must ignore the particulars while they seek to discover how federal officials and members of Congress ever became able to exercise inherent discretion.

Indeed, the battle against arbitrary government action was fought and won 236 years ago.

The U.S. Constitution is already the supreme Law of the Land. And, that Constitution—to which all government servants must already swear an oath to support—enumerates allowed federal powers, powers that may be exercised, it tells us, using necessary and proper means.

By such protections, no government servant in this Union may become our political master.

To uphold these unvarnished truths, patriots need only figure out how clever scoundrels long ago discovered a way to bypass normal constitutional constraints. Patriots must find that clever loophole that allows government servants to do as they please, whenever they want.

While seeking the answer, patriots must ignore the lie that officials are entrusted to determine throughout the Union the extent of their own power. Only States may formally change the powers allowed the federal government, by ratifying proposed amendments.

Patriots foolishly believe that judges may redefine words of the Constitution, because to date no one offered a sufficient alternative explanation.

Thankfully, that is no longer true.

The proper point to begin an investigation into discovering what is going on, is to realize that the U.S. Constitution has always had a highly-unusual exception to all its normal rules.

Clever rascals simply discovered how to turn an unfamiliar exception against the remainder, allowing the strict letter of the Constitution to overrule its spirit.

Exploiting the differences between the unusual exception and the normal rule has allowed Progressives the devious means to bypass normal constitutional constraints.

An explanation is in order.

Article I, Section 8, Clause 17 of the U.S. Constitution enumerates a special place created as the District Seat for the Government of the United States.

This special place is different from everywhere else, because all government power is held in the District of Columbia, federally, *without* State involvement.

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Indeed, the U.S. Constitution is the compact that normally divides governing power into federal and State authorities. Named powers were given to Congress and federal officials, with the remainder (except a few prohibitions) reserved to the several States.

But, in D.C., members of Congress hold all governing power, exclusively, without sharing with any State.

And, while the States of the Union have their own State Constitutions to guide and restrict them, in D.C., no State, District or State-like Constitution exists or remains operational to bind Congress.

Thus, members of Congress must necessarily devise their own rules for the District Seat, within their own discretion. They need only avoid breaking a few named prohibitions, such as found in the Bill of Rights.

But, since the "District" is not a "State," then even the prohibitions the U.S. Constitution places upon "States" do not apply in D.C. The District Seat has few binding constraints on government, otherwise allowing the exercise of inherent discretion.

And, since only "States" under Article I elect U.S. Representatives and U.S. Senators to Congress, then residents of D.C. are not represented in Congress (the Constitution only guarantees to "every *State* of this Union" a "Republican Form of Government").

Without legislative representation nor its guarantee in D.C., it is no crime or foul if members of Congress delegate (local) legislative power to bureaucrats of the alphabet agencies who enact regulations held as law.

Neither does it violate any guarantee if judges "legislate from the bench" and "enact" law (for the District Seat). Nor is it any crime for judges to take words found in the Constitution and redefine them to mean *something else*—for the District of Columbia.

In other words, all that has been going on for centuries to circumvent the Constitution is that members of Congress have simply used their local legislative powers *beyond the District's borders*.

While Patriots invariably respond that the District's special powers must surely be limited to the District's boundaries, they haven't been paying attention.

Indeed, that is not how Chief Justice John Marshall ruled in 1821 *(Cohens v. Virginia)*, where he simply said:

> "The clause which gives exclusive legislation is, unquestionably, a part of the Constitution, and, as such, binds all the United States."

Marshall relied upon the strict words of Article VI, Clause 2 of the U.S. Constitution—that "This Constitution" shall be "the supreme Law of the Land."

Since Clause 17 is necessarily "part" of "This Constitution," then Marshall held that even Clause 17 was part of that supreme law that binds all the U.S.

Thus, laws enacted by Congress in pursuance of Clause 17 have simply been enforced throughout the Union. *That is all that is happening!*

Thankfully, no member of Congress or federal official (including supreme Court justices) may change the powers allowed them throughout the Union.

Thus, to throw off the improper extension of (local) federal powers beyond their true domain, we need only ratify a new amendment finally to provide an express exception to the current rule that all of the Constitution is the supreme Law of the Land. The new amendment would merely and specifically exempt Clause 17 from being any part of the supreme law of the land under Article VI.

No local powers of any State ever bind the Union—neither should Congress' local power for the District Seat either, just because members of Congress are involved.

Or, if one wanted to repeal inherent discretion from every square foot of American soil, one could repeal Clause 17, entirely.

The first option allows inherent federal discretion, but necessarily restricts it to D.C. The second option prohibits inherent discretion, everywhere.

For further information, please see any of Matt Erickson's ten public domain books, including his latest, *Understanding Federal Tyranny*, freely available electronically at www.PatriotCorps.org.

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